

ESDRAS K. HARTLEY

IBLA 77-97

Decided May 22, 1978

Appeal from decision of the Idaho State Office, Bureau of Land Management, rejecting acquired oil and gas lease offer I-12503.

Set aside and remanded.

1. Mineral Leasing Act for Acquired Lands: Consent of Agency -- Oil and Gas Leases: Acquired Lands Leases

Where acquired lands are under the jurisdiction of the Bureau of Reclamation, its opinion as to the desirability of issuing an oil and gas lease under the Mineral Leasing Act for Acquired Lands is not controlling, although its views will be considered carefully. Rather, it is up to the Bureau of Land Management to assemble information and to determine on the Department's behalf whether such a lease may be issued.

2. Oil and Gas Leases: Acquired Lands Leases

Where the Bureau of Land Management adopts the views of the Bureau of Reclamation, recommending rejection of an oil and gas lease offer for acquired lands within a wildlife area, without making an independent evaluation of the compatibility of oil and gas leasing with the intended function of the lands and without considering the feasibility of issuing the lease with appropriate protective stipulations, the matter is properly remanded to BLM for such independent evaluation and consideration, during which time the offeror may submit proposals for protective stipulations.

APPEARANCES: Eugene A. Reidy, Esq., Denver, Colorado, for appellant.

## OPINION BY ADMINISTRATIVE JUDGE STUEBING

On July 22, 1976, Esdras K. Hartley (appellant) filed an acquired lands oil and gas lease offer with the Idaho State Office, Bureau of Land Management (BLM), pursuant to the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. §§ 351-59 (1970). BLM designated this offer as No. I-12503. On December 16, 1976, BLM issued a decision rejecting this offer, from which decision this appeal followed.

BLM's decision cites the following reason for its rejection of appellant's offer, quoted almost verbatim from a report by the Bureau of Reclamation (BuRec) concerning the lands covered by the offer:

The lands in this offer are under administration, management and jurisdiction of the Bureau of Reclamation. The lands are in the immediate vicinity of the Palisades Reservoir, within the reservoir high water line or adjacent to the reservoir. Lands downstream from the dam along the river have been determined to be a goose nesting area. It is felt that oil and gas leasing of these lands would also result in situations that would be undesirable and in opposition to other programs involving these lands. The Bureau of Reclamation has recommended that no leases be permitted on the lands in this offer.

[1] BuRec is a bureau of the Department of the Interior rather than an independent agency. Therefore, unlike the Federal Power Commission or the Department of Agriculture, for example, its opinion as to the desirability of issuing an oil and gas lease under the Mineral Leasing Act for Acquired Lands, supra, is not controlling, although its views will be considered carefully. Kent E. Peterson, 30 IBLA 199 (1977); Shell Oil Company, 30 IBLA 187 (1977); Walter W. Sapp, 29 IBLA 319 (1977); Daphfine Shear, 29 IBLA 33 (1977); Duncan Miller, A-28104 (December 11, 1959). Rather, it is up to BLM to assemble information and to determine on the Department's behalf whether such a lease may be issued. Kent E. Peterson, supra; Shell Oil Company, supra; Walter W. Sapp, supra; Daphfine Shear, supra.

Kent E. Peterson, supra, and Walter W. Sapp, supra, are cases closely analogous to the present appeal, in which BLM rejected oil and gas offers for acquired lands under the management of BuRec, which had recommended that no mineral leasing be allowed because the lands were within a wildlife area. BLM apparently treated BuRec's recommendations as mandating rejection. We held there that the cases should be remanded to BLM, as their records did not reflect that it had made any independent evaluation of the compatibility of oil and gas leasing with preserving the intended function of the lands, or that it had considered the feasibility of issuing the lease with appropriate protective stipulations.

We hold similarly in the instant case that the matter should be remanded to BLM for such independent evaluation and consideration. It appears likely here, as in Peterson and Sapp, that BLM incorrectly regarded the BuRec recommendation as binding, as there is nothing in the record suggesting that BLM either independently evaluated whether granting the lease would be, as BuRec concluded, "undesirable" and "in opposition to other programs involving these lands," or considered the feasibility of issuing the lease with appropriate protective stipulations. On remand, BLM should independently ascertain the detailed factual basis of such conclusions and determine whether leasing would be permissible if coupled with appropriate protective stipulations. Appellant may submit proposals for protective stipulations for consideration before BLM acts on its offer.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and remanded for action consistent herewith.

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Edward W. Stuebing  
Administrative Judge

We concur:

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Douglas E. Henriques  
Administrative Judge

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Newton Frishberg  
Chief Administrative Judge

